

Andrew Gowers
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Dear Andrew Gowers

I understand that you have been invited to head a Review of intellectual property by The Chancellor of the Exchequer. I am a member of ACID (Anti Copying In Design), an independent trade organisation whose sole objective is to assist its members in the protection of their intellectual property rights.

As a product designer, the importance of protecting my IPR cannot be underestimated to the success of my business. Too many young designers see their precious ideas stolen or copied by unscrupulous manufacturers rather than paying for their own unique product development. The view of many of my fellow designers (and by this I mean consultants/freelance designers/small producers rather than large manufacturers who call themselves designers) is that manufacturers have too much of an upper hand and we need some fair and balanced Intellectual Property Right legislation. I would point to James Dysons recent court victory, which went some way to hopefully setting a precedent in support of designer's rights not to be copied.

Both Gordon Brown and Tony Blair have stated many times that the British economy is becoming an idea-based economy. Is it not about time that the government provided protection to those many small businesses in the creative industries which do so much to drive that very ideas based economy.

Dids Macdonald, ACID's Chief Executive recently met with the review team to put forward ACID's objectives and I would like to take this opportunity to support ACID's list of priorities while adding a few of my own to ensure that they are given due consideration in your recommendations.

- Unlawful Imitation - the introduction of a new law of unlawful imitation (but only to bring the UK in line with the majority of other European countries on unfair competition), thereby eliminating one of the most costly, time consuming and difficult legal remedies for many small companies to rely upon, that of "passing off"
- Addressing the disparity between copyright owners and design right owners (why should a furniture designer have more rights than, say, an illustrator? Why should an author have moral rights and not a lighting designer?)
- For design right infringements to have criminal sanctions - at the moment there is little disincentive to copyists encouraging design theft as a "soft touch"
- Inclusion of design infringement in the UK's National IP Crime strategy (at present designers do not have a voice in national policy in The Patent Office Report's current format)
- An increase in exemplary damages to discourage the culture that its OK to copy and free ride on another's design ideas
- A national design infringement mediation scheme - based on ACID's already successful grass roots mediation initiative (over 1600, less than 30% required further legal action)
- Educate to Protect - a national educational scheme to encourage understanding and knowledge of IP as a positive tool to exploit and underpin innovation focussing on practical tools of self help, such as generic industry standard legal agreements
- Pressure placed on design buyers to make a publicly declared inclusion in their CSR's of support for the creative industries, respect for intellectual property rights and a commitment to "commission original work and not copy it".
- Influence and pressure should also be exerted on those design buyers when caught out to be discouraged from stonewalling challenge and perpetuating litigation fuelled by their legal purchasing capability. IP lawyers, too, have a responsibility to work within recognised and regulatory frameworks, there are some that hide behind time wasting smokescreens of legalese and should be discouraged. What other profession regulates itself?
- A highly visible National Intellectual Property insurance scheme, accessible, affordable and available to all innovators. We insure our cars, houses, why not the value created in our IP - what better deterrent could there be against copying?
- Greater promotion and awareness of the relatively new and much unpublicised registered UK and registered Community design right lasting 25 years in 25 members states. Having a monopoly right, a certificate which say you own a design, is much less legally expensive to pursue if there is an infringement because you don't have to prove copying. Again, there is a deterrent element in publicising such a registered design on marketing literature, websites, etc.
- The Appointment of a Government Minister - Managing Intellectual Property. A dedicated Minister who will ensure that there is a coordinated effort to place intellectual property and exploitation as a national priority.

I would also like to add the following comments.

As a product designer I feel that it is important that any review takes into account the whole area of how designers are paid for their work as this directly impacts on IPR law!!!!. Why should a photographer or painter retain copyright and a designer not, especially when the boundaries of the two are blurring with the TATE opening a design section and Ron Arad furniture selling alongside sculpture and paintings for great sums.

At the moment, if a designer is paid a fee to design something, every single little sketch produced is then owned by the client (unless specified in a contract by the designer). I would like to suggest that a client will own the rights to any product reduced to practice, ie actually manufactured (or developed to a final agreed stage) if the designer is paid a fee for this service. The client is paying for an end product to be designed and therefore has a right to own the rights to this product and any related sketches, CAD images etc but the designer should retain the rights to any designs rejected by the client as well as retaining Moral Rights on this product. This means the designer will not find themselves in breach of a thumbnail sketch at the bottom of a drawer forgotten by the client because they did not like it in the first place. The whole principle of what is being commissioned is very much tied up with the Intellectual Property Rights involved.

In law any transfer of IPR under commission should only happen once all outstanding fees have been paid in full by the client.

With direct relation to the above paragraph, I would like to suggest that if a manufacturer agrees to license a designers design and pay a royalty the designer retains the IPR to this product in law. The reasons for this are numerous but these are the most important.

1: Many manufacturers are recognising that working with a designer on a license agreement means they can develop more ideas at a lower initial outlay. For all intents and purposes they are buying design on "the never never". They are asking the designer to 'loan' them development time in exchange for a potentially higher payout later on. This is just the same as the relationship between an author and publisher.

ACID is campaigning to make sure that more manufacturers use design as a legitimate tool to develop their own products instead of copying. Such licensing agreements are one way of encouraging this.

2: By retaining the IPR the designer retains a powerful bargaining chip to make sure the manufacturer pays up, if the product sells and is able to fairly easily withdraw the license should the manufacturer default on payments. This seems a fair exchange. If the designer is going to take a risk on sales and invest a huge amount of time and money in developing the design, then they should have the right in law to retain their IPR. All associations should be encouraged to support this very fair arrangement. In some ways it can be seen as a secured loan from a bank. If you wish to borrow a serious amount of money from a bank they want surety that you will pay this back. This allows them to take ownership of a car or property if you default.

THE ONLY SHURITY THAT A DESIGNER (ESPECIALLY A YOUNG UNKNOWN DESIGNER) HAS IS THE IPR ON THE DESIGN. If they are forced to sign over this IPR they are left with little other than expensive court costs. Of course they may still have to resort to the courts, but by retaining IPR they have a very powerful weapon that is reasonably easy to at least threaten to withdraw so concentrating the mind on the manufacturer throughout the length of the license agreement.

3: This type of arrangement is common in Europe and the result can be seen in a huge number of designs being produced every year within the furniture industry for example, because designers know they can trust manufacturers, so the exchange of designs and ideas is open and free, due to decent anti-copying laws.

4: It is in the countries where IPR is grabbed by big business (especially the USA) that sees the least innovation in creative design, because designers see no advantage in sending designs to companies they know want too much in exchange for too little. Laws that are too restrictive on the weak and powerless (designers in this case compared to big business) tend to stifle the very grass roots, which in the end become the next Philip Starke.

So to sum up this section:

If a designer is commissioned and paid a full fee then the client ends up owning the product that is developed through to production or agreed end stage and the designer still owns those which were rejected.

If a manufacturer wishes to enter into a licensing agreement with a designer, then the designer retains all IPR (the manufacturer is still able to take copiers to court) in exchange for a royalty for the life of the product plus any reintroduction later on.

This seems a very fair and equitable set of simple laws.

Finally it seems terribly unfair that different professions have different rights re their Intellectual Property Rights. Why should a musician such as Paul McCartney have the right to receive royalties for his whole life plus 70 years for his creativity while a designer has no such standard right? There needs to be a level playing field here. Products may not always last as long as a song, but some do. Robin Day the famous 1950's furniture designer has seen his work re-issued recently. He may be lucky enough to still be paid royalty on these products but he may not.

A copy of this letter will be sent to ACID and I do hope that our organisation can look forward to a high priority being placed upon these issues which affect many thousands of designers and manufacturers, not only ACID members, but those who rely on design rights in the protection of their IP.

Yours sincerely,

A handwritten signature in cursive script that reads "Damian Evans".

Damian Evans
Principal
Element Design

Cc: Ms D Macdonald, CEO, ACID